

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF KENTUCKY
3 LOUISVILLE DIVISION

4 UNITED STATES OF AMERICA,) Case No. 3:06-MJ-230
5)
6 Plaintiff,)
7)
8 VS.)
9)
10 STEVEN D. GREEN,)
11)
12 Defendant.) July 6, 2006
13) Louisville, Kentucky

14 *****

15 TRANSCRIPT OF INITIAL APPEARANCE
16 BEFORE HONORABLE JAMES D. MOYER
17 UNITED STATES MAGISTRATE JUDGE

18 *****

19 APPEARANCES:

20 For United States: Marisa J. Ford
21 Brian Butler
22 U.S. Attorney's Office
23 510 West Broadway
24 Louisville, KY 40202
25 For Defendant: Scott T. Wendelsdorf
Patrick J. Bouldin
Western Kentucky Federal
Community Defender, Inc.
629 S. 4th Ave., Suite 200
Louisville, KY 40202

[Defendant present.]

26 Dena Legg, CCR, RMR, CRR
27 Official Court Reporter
28 221 U.S. Courthouse
29 Louisville, KY 40202

30 Proceedings recorded by mechanical stenography, transcript
31 produced by computer.

1 (Begin proceedings in open court at 4:50 p.m.)

2 THE COURT: All right. Good afternoon, everyone. We
3 have a matter on the court's criminal docket this afternoon.
4 Before we call it, let me remind all members of the public that
5 under the rules of the Western District and the Eastern
6 District of Kentucky, you're not allowed to have a cell phone
7 in here even if it's off. So I believe that everyone's been
8 advised of that, but I just want to revisit that topic with
9 everyone.

10 Madam Clerk, if you'll call the case for us, please.

11 THE CLERK: 3:06-MJ-230, United States of America v.
12 Steven D. Green. We're here for initial appearance, Your
13 Honor.

14 MR. BUTLER: Good afternoon, Judge. Brian Butler for
15 the United States.

16 THE COURT: All right. Mr. Green, if you'd step up to
17 the lectern there, sir.

18 Mr. Green, I'm Judge Moyer. I'm a United States magistrate
19 judge and we're here in federal court in the Western District
20 of Kentucky in Louisville in connection with criminal charges
21 that have been brought against you by the United States.

22 Since this is your first appearance in front of this court,
23 I want to begin by advising you of some of your important
24 rights under the United States Constitution. You have very
25 likely been advised of these previously because I know you

1 appeared in court in North Carolina, but I'm going to in an
2 abundance of caution do it again.

3 The first thing I want to advise you of is you have the
4 right to remain silent. What that means, among other things,
5 is you're not required to make any statements here in court
6 today or out of court today or at any other time. You're not
7 required to speak to law enforcement, to the probation office,
8 to the marshal's service or to anyone unless you voluntarily
9 choose to do so. And anything you say here or anywhere else
10 has the possibility of being used against you by the
11 prosecution in this case or some other case. Do you understand
12 that right to remain silent, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. You also have the right to
15 counsel, which is an extremely important right. If you are not
16 able to afford a lawyer, the court will appoint one at court
17 expense if you meet the financial guidelines.

18 If you are able to afford a lawyer, then you may hire a
19 lawyer of your own choosing, in which case you're responsible
20 for paying the lawyer's fee, either on your own or with family
21 members or friends assisting you. Are you able to afford an
22 attorney, sir?

23 THE DEFENDANT: No.

24 THE COURT: Am I correct that you had counsel
25 appointed on your behalf when you were before the court in

1 North Carolina?

2 THE DEFENDANT: Yes.

3 THE COURT: You had court-appointed counsel?

4 All right. What I'm going to do is I'm going to ask you
5 very briefly some questions about your ability to afford a
6 lawyer. I'm not going to ask you anything at all about the
7 charges. My only purpose in asking the questions is to make
8 sure that you meet the financial guidelines for court-appointed
9 counsel. Assuming that you do, the court will appoint the
10 federal defender's office here in Louisville to represent you.

11 If you think any of the questions might tend to incriminate
12 you or if you have any doubt or uncertainty about any of the
13 questions, let me know. Do you understand, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Please raise your right hand.
16 (Oath administered to the defendant.)

17 THE COURT: And are you Steven Green, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you able to afford an attorney?

20 THE DEFENDANT: No.

21 THE COURT: The court has here in front of it a
22 financial affidavit that was filled out by you today. Is the
23 information on this financial affidavit -- I'm just going to
24 hold it up so you can see what the piece of paper is -- is it
25 true and accurate to the best of your information, sir?

1 THE DEFENDANT: Yes, it is.

2 THE COURT: All right. According to this affidavit,
3 you are currently not employed, is that correct?

4 THE DEFENDANT: That is correct.

5 THE COURT: And according to this affidavit -- it's
6 unclear to me. Are you married or not married, sir?

7 THE DEFENDANT: I'm not married.

8 THE COURT: You're not married. Do you have any
9 regular source of income at all, such as any kind of pay from
10 the military, any other income, such as social security, a
11 worker's compensation award, any kind of regular income at all?

12 THE DEFENDANT: No, I don't.

13 THE COURT: Do you own or lease a car or truck or
14 other motor vehicle? It looks like here I see a 1995 Lincoln
15 Town Car, is that right?

16 THE DEFENDANT: That's correct.

17 THE COURT: Okay. Is that your car, sir?

18 THE DEFENDANT: That's my car.

19 THE COURT: Other than the Lincoln Town Car, do you
20 have any other motor vehicles, cars, trucks, motorcycles,
21 anything like that?

22 THE DEFENDANT: No, I don't.

23 THE COURT: All right. A boat, for instance?

24 THE DEFENDANT: I don't have anything else but that
25 car.

1 THE COURT: All right, fair enough. Do you have a
2 bank account of any kind with more than \$500 in it?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Okay. What's the -- it looks to me here
5 as if you have a checking account that you indicated you had
6 \$6,000 in it, is that correct?

7 THE DEFENDANT: Somewhere around that.

8 THE COURT: Somewhere around there, okay. Other than
9 that checking account, do you have any other banking account of
10 any kind?

11 THE DEFENDANT: No, I don't.

12 THE COURT: Do you own any stocks, bonds, mutual
13 funds, investments, pension, anything like that?

14 THE DEFENDANT: No, I don't.

15 THE COURT: Do you own any land or real estate, a
16 house, a farm, an undeveloped lot, anything like that?

17 THE DEFENDANT: No.

18 THE COURT: All right. All right. I'm going to find
19 that the defendant is eligible for appointment of counsel under
20 the guidelines under the Criminal Justice Act. He does have an
21 automobile with modest value. He does have some assets in the
22 bank but he's also unemployed. He's facing extremely serious
23 charges and in the judgment of the court, the assets and
24 resources he has are not adequate to hire defense counsel, and
25 I will appoint the office of the federal defender to represent

1 him.

2 Good afternoon, Mr. Wendelsdorf.

3 MR. WENDELSDORF: Good afternoon, Your Honor, Scott
4 Wendelsdorf and Pat Bouldin for the defendant. This is a death
5 eligible case. Both Mr. Bouldin and myself are death
6 qualified.

7 THE COURT: Yes.

8 MR. WENDELSDORF: We will be representing the
9 defendant in this matter. We acknowledge a receipt of a copy
10 of the complaint in this matter. We admit the identity of the
11 defendant. We waive all further formalities of initial
12 appearance and enter a plea of not guilty to all counts.

13 THE COURT: All right.

14 MR. WENDELSDORF: Likewise, we waive a detention
15 hearing in this matter. We waive a preliminary hearing in this
16 matter, and I will say for the record that although counsel
17 believes there is a serious question as to proper venue of
18 these charges, that this matter has been thoroughly discussed
19 with the defendant in anticipation of appointment, that he is
20 well versed in his alternatives to challenge or waive any
21 attack on venue. It is his decision, in which Mr. Bouldin and
22 I concur, that he will waive any challenge to the venue in this
23 matter and consent to this case remaining and being tried to
24 completion in the Western District of Kentucky.

25 It is our anticipation that this will be assigned under

1 Local Rule 18.2 to the Paducah division for trial and
2 disposition.

3 THE COURT: All right. Let's break that down. There
4 are a number of important aspects of what counsel has just
5 said.

6 First, I think we ought to start off and have appropriate
7 waiver forms of the preliminary examination and detention
8 hearing executed and filed of record.

9 MR. WENDELSDORF: The defendant has executed the
10 waiver of detention hearing and the waiver of preliminary
11 hearing. I will tender these to the clerk.

12 THE COURT: All right. Very good. Let those be filed
13 of record.

14 The court notes, it's self-explanatory, the waiver of any
15 venue objections and also notes that counsel has advised that
16 under the local rules, it's his view that the -- that if an
17 indictment were to be returned in this matter, that it would be
18 triable in the jury division in Paducah. Is that a fair
19 understanding, Mr. Wendelsdorf?

20 MR. WENDELSDORF: I believe it is. I believe the
21 United States concurs.

22 MR. BUTLER: We would concur, Your Honor.

23 THE COURT: All right. All right. That --

24 MR. WENDELSDORF: Your Honor, I think the waiver of
25 venue is a significant waiver, and I would ask that the

1 defendant be examined by the court.

2 THE COURT: All right. Mr. Green, if you would step
3 up here. Let me ask you some questions, sir, about this topic
4 that Mr. Wendelsdorf has brought up, just to make sure that you
5 have a full understanding of what your decision is, sir.

6 We've used a technical term, venue here. That's a lawyer's
7 term. The concept behind it is the question of where a case is
8 tried, and without trying to dissect all the legal
9 possibilities here, it is the court's view that it is
10 conceivable that a person in your position could through
11 counsel raise a question as to whether this case should be
12 tried in the Western District of Kentucky. There might be a
13 question as to whether it should be tried in some other federal
14 court.

15 MR. WENDELSDORF: Principally, the Western District of
16 North Carolina where the defendant was arrested, Your Honor.

17 THE COURT: Yes, sir. And that is an argument that
18 can be presented through your lawyer to this court with both
19 sides taking positions in writing and with the trial judge or
20 the magistrate judge, depending upon how it's presented, making
21 a decision.

22 By waiving this argument, what that means is that you are
23 in effect giving up or setting aside or abandoning any chance
24 to contest whether the case should be in some federal court
25 other than the western district. Am I making sense to you,

1 sir?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: That if you waive or give up this
6 argument, that this case will proceed in the Western District
7 of Kentucky, not in North Carolina or any other federal court?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that? And have you
10 discussed this with Mr. Wendelsdorf?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: All right. And have you had -- are you
13 satisfied with the advice that Mr. Wendelsdorf has given you?

14 THE DEFENDANT: Yes, I am.

15 THE COURT: Do you understand the court is not putting
16 any pressure on you of any kind to make your mind up or to
17 decide quickly or to make a snap judgment, and that if you want
18 to evaluate or consider this issue, you have the full right to
19 do so, do you understand that, sir?

20 THE DEFENDANT: I do understand that.

21 THE COURT: And you are prepared today to in effect
22 agree that the case will be tried in the Western District of
23 Kentucky, not any other place, am I right?

24 THE DEFENDANT: Yes, you are right.

25 THE COURT: All right. Counsel, do you believe any

1 other colloquy with the defendant is necessary for a full
2 record here?

3 MR. WENDELSDORF: No. Thank you, Judge.

4 THE COURT: All right.

5 MR. BUTLER: Judge, the United States would simply ask
6 that the court ask the defendant if he understands that this
7 is -- the court would take this as a permanent waiver from now
8 to the end of these proceedings, whether it be a guilty plea,
9 trial, sentencing or however these proceedings terminate.

10 THE COURT: All right. Let me just take up that
11 point, which the prosecutor, Mr. Butler, raised.

12 By waiving this argument, by giving it up today, you're
13 giving it up for the duration of this case. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And if you got part way through the case,
17 part way through the trial to sentencing or to some other phase
18 and you suddenly decided, you know, I really think that that
19 case should have been tried in Charlotte, that would be too
20 late. You would have abandoned it. Do you understand that,
21 sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Very good. Anything else,
24 Mr. Butler?

25 MR. BUTLER: No, Your Honor, not on that issue.

1 THE COURT: All right. Because of the waiver of the
2 preliminary examination, the next step in this case would be
3 its presentation to a grand jury, and then following grand jury
4 action, were the grand jury to return an indictment, the
5 scheduling of an arraignment.

6 Mr. Butler, can you advise the court and counsel and the
7 defendant about the probable schedule of presentation of this
8 to the grand jury?

9 MR. BUTLER: The probable schedule, Your Honor, would
10 be the mid-month grand jury of July.

11 THE COURT: Of July. Well, we would -- given the
12 significance of this case, we would -- the court would
13 obviously be willing to hold an arraignment separately or apart
14 from the regular arraignment docket so that there's no delay.

15 MR. WENDELSDORF: Would it be appropriate to have an
16 arraignment on a Paducah division case here in Louisville or
17 should that be best left to Magistrate King?

18 THE COURT: I think once an indictment is returned and
19 it's returned in the Paducah division, I think that the
20 arraignment ought to be in the Paducah division. That's my
21 initial reaction to it. Mr. Butler, any comments on that?

22 MR. BUTLER: We would concur. And Your Honor, the
23 reason for the recommendation that we believe the Paducah
24 division is appropriate, because that's the site of Fort
25 Campbell, where this defendant was stationed prior to going to

1 Iraq.

2 THE COURT: Right, and that has been the court's
3 supposition. So I think the thing to do would be to -- well, I
4 don't want to state what any of the judges in Paducah would do.
5 I am going to surmise that given the very serious nature of
6 this case, that following the return of an indictment, a -- an
7 arraignment could be speedily scheduled before either the
8 magistrate judge or one of the district judges in Paducah.

9 MR. BUTLER: Yes, sir.

10 MR. WENDELSDORF: Yes, sir.

11 THE COURT: Madam Clerk.

12 THE CLERK: August the 8th, Your Honor.

13 THE COURT: August the 8th, do you have a date?

14 THE CLERK: Yes, sir.

15 THE COURT: And that is in front of --

16 THE CLERK: That would be in the Paducah division,
17 Your Honor.

18 THE COURT: All right. If you all will make a note of
19 that as the arraignment date.

20 All right. There has been a waiver of the detention issue.
21 The defendant is already in the custody of the United States
22 Marshal's Service pursuant to an arrest warrant. We have
23 scheduled an arraignment date. We have discussed venue. Those
24 are the principal pretrial topics that the magistrate judge
25 thought of in advance.

1 Mr. Butler, does the United States have any other topics
2 that we ought to discuss while we're in court here this
3 afternoon?

4 MR. BUTLER: Your Honor, simply to the extent that the
5 court may not have done it, we would ask the court to make a
6 formal finding that the defendant has waived venue now and
7 throughout these proceedings.

8 THE COURT: All right. Well --

9 MR. WENDELSDORF: No objection.

10 THE COURT: All right. The court will so find and
11 will enter a separate written order summarizing the colloquy
12 with the defendant and finding in writing, separate and apart
13 from the court transcript, a waiver of venue, and I'll ask the
14 court's staff attorneys to assist the court in the drafting of
15 that. That will be entered tomorrow of record.

16 Beyond that, anything else that the United States would
17 bring to the court's attention?

18 MR. BUTLER: No, Your Honor.

19 THE COURT: Mr. Wendelsdorf, anything else?

20 MR. WENDELSDORF: I can think of nothing, Your Honor.
21 Thank you.

22 THE COURT: All right. All right. Is anyone else
23 aware of any further business to bring before the court this
24 afternoon?

25 MR. BUTLER: No, sir.

1 THE COURT: Mr. Wendelsdorf?

2 MR. WENDELSDORF: No, Your Honor. Thank you.

3 THE COURT: All right. The defendant will remain in
4 the custody of the United States Marshal's Service pending the
5 presentation of this matter to the grand jury. We're
6 adjourned.

7 (End of proceedings.)

8
9 C E R T I F I C A T E

10 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
11 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
12

13 s/Dena Legg
14 Certified Court Reporter No. 20042A157
Official Court Reporter

July 31, 2006
Date